IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *RGN Management Limited Partnership v. 7th Light Education Group Inc.,* 2023 BCSC 190

Date: 20230209
Docket: S211324
Registry: Vancouver

Between:

RGN Management Limited Partnership by its general partner RGN Management GP Inc.

Plaintiff

And

7TH Light Education Group Inc. sometimes doing business as Seventh Light Education Group Inc. and sometimes doing business as Centre for Entertainment Arts

Defendant

Corrected Judgment: The text of the judgment was corrected on the front page and at paragraphs 7, 18 and 25 on February 21, 2023.

Before: The Honourable Madam Justice Tucker

Reasons for Judgment on Costs

Counsel for the Plaintiff:	I.A. Vanderslice
Counsel for the Defendant:	D. Moonje
Place and Date of Hearing:	Vancouver, B.C. February 2, 2023
Defendant's Written Submissions Received:	January 27, 2023
Plaintiff's Written Submissions Received:	January 30, 2023
Place and Date of Judgment:	Vancouver, B.C. February 9, 2023

[1] On October 26, 2022, I granted an interlocutory application brought by the defendant, 7th Light Education Group Inc. (“SLEG”), and ordered certain funds held in court to be released.

[2] SLEG requested the opportunity to speak to costs, and now seeks costs of the application in any event of the cause. The plaintiff, RGN Management Limited Partnership, doing business as Regus (“Regus”), submits the costs should be in the cause.

Background

[3] Regus filed a notice of civil claim against SLEG alleging breach of a contract between them. Regus obtained a pre-judgment garnishment order (“Order”), which was served on Langara College (“Langara”). Langara paid into court the amounts otherwise payable to SLEG under two invoices SLEG had submitted to Langara under a contract between them.

[4] Following the payment in, SLEG applied under R. 8-5(8) of the *Supreme Court Civil Rules* [*Rules*] to set aside or vary the Order under the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 [*COEA*] or, in the alternative, to have the funds paid in respect of one invoice (the “1044 Payment”) released to it under *COEA*, s. 5.

[5] In reasons for judgment indexed as 2022 BCSC 1866 (“Decision”), I ordered the amount of the 1044 Payment released on the basis that Langara’s payment obligation under the relevant invoice did not fit within the *COEA* definition of “debts, liabilities and obligations” and the 1044 Payment was not properly attached by the Order.

[6] The Decision was silent as to costs.

Issue

[7] Rule 14-1(12) of the *Rules* establishes a default position on costs on interlocutory applications:

> **Costs of applications**
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> (12) Unless the court hearing an application otherwise orders,
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> (a) if the application is granted, the party who brought the application is entitled to costs of the application if that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is not entitled to costs even though that party is awarded costs at trial or at the hearing of the petition, and
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> (b) if the application is refused, the party who brought the application is not entitled to costs of the application even though that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is entitled to costs if that party is awarded costs at trial or at the hearing of the petition.

[8] Under the default, application costs are costs "in the cause" and the party awarded the application costs only recovers those costs if the party is ultimately awarded costs in the proceeding. SLEG asks for an order "otherwise", seeking what are known as costs "in any event" of the cause. Where application costs are awarded in any event, the party awarded the application costs is entitled to those costs at the conclusion of the litigation even if the other party is awarded costs in the proceeding.

[9] SLEG argues that costs in any event are appropriate here because the issue determined under the interlocutory application – i.e., the nature of the 1044 Payment – is a discrete issue that will not be revisited at the trial.

[10] SLEG cites the following as examples of application costs awarded on an "in any event" basis in comparable circumstances: *Dyer v. Dyer*, 2016 BCSC 1115 at para. 49 (application to determine whether party's counsel disqualified from acting); *Thacker v. Global Warranty Corporation*, 2010 BCSC 190 at para. 7 (application for a publication ban); *Lutoborska v. Nyquvest*, 2015 BCSC 557 at para. 26 [*Lutoborska*] (application to determine whether party's counsel disqualified from

acting); *The Owners of Strata Plan KAS3204 v. Navigator Development Corporation*, 2020 BCSC 1954 at para. 65 (summary trial application to strike a third party notice); *Great Canadian Gaming Corporation v. British Columbia Lottery Corporation*, 2018 BCSC 370 at para. 18 (application seeking to convert an existing claim into a class action); *Fairhurst v. Anglo American PLC*, 2012 BCSC 45 at para. 6 (jurisdictional objection); *Hub City Supplies Ltd. v. David Waugh & Pacific West Systems Supply Ltd.* (1995), 38 C.P.C. (3d) 320 at para. 16, 1995 CanLII 1660 (B.C.S.C.) [*Hub City Supplies*] (injunction application).

[11] SLEG also cites the following as instances where costs in any event of the cause were awarded in respect of an application dealing with garnishment: *Andersen v. Pacific Coast Systems Ltd*., [1994] B.C.J. No 597 at para. 8, 1994 CanLII 3251 (S.C.); *Clearly Canadian Beverage Corp. v. Remic Marketing & Dist. Inc*. (1992), 22 C.P.C. (3d) 387 at para. 16, [1992] B.C.J. No. 1867 (S.C.); *Green Stream Botanicals Corp. v. Pivot Pharmaceuticals Inc.*, 2020 BCSC 166 at para. 32; *Opus Consulting Group Ltd. v. Ardenton Capital Corporation*, 2019 BCSC 1847 at para. 17; *Pybus v. National Credit Counsellors of Canada Inc*., 2006 BCSC 1194 at para. 26; *Trade Fortune Inc. v. Amalgamated Mill Supplies Ltd*. (1994), 24 C.P.C. (3d) 362 at para. 74, 1994 CanLII 845 (S.C.). While conceding that none of these decisions set out the rationale for granting costs on an “in any event” basis, SLEG nonetheless contends that these cases demonstrate that costs in any event are “routinely” granted in the garnishment context.

[12] Finally, SLEG asserts that Regus took positions and/or advanced arguments on the application that unnecessarily complicated the issues and required additional time.

[13] In response, Regus notes that SLEG’s April 28, 2022 notice of application specifically sought an order of “costs to the Defendant in the cause.” It argues that SLEG’s “new” costs position is problematic for the following reasons.

[14] Regus points to the default position under R. 14-1(12). It submits that when reasons for judgment are silent as to costs, the default rule engages: *Stelmaschuk v.*

The College of Dental Surgeons of British Columbia, 2017 BCSC 806 at para. 21. Regus says the default rule engaged upon issuance of the Decision.

[15] Further, Regus submits that SLEG has not identified any grounds for departing from the default position. Regus says SLEG's application was not discrete in the sense contemplated by the cases SLEG relies on, as the issue of whether the 1044 Payment was properly attached under the Order addresses Regus' entitlement to security in the event it succeeds in its claim at trial. It argues that garnishment disputes are not wholly unrelated to the substance of the trial.

[16] Regus also disputes SLEG's assertion that costs are routinely granted in any event of the cause on garnishment applications, submitting that orders for costs in the cause can be readily found: e.g., *Rufus Enterprises Ltd. v. Mikelson*, 2006 BCSC 1815 at para. 19 (Master Taylor); *Wake v. Habitat for Humanity Society of Greater Vancouver*, 2013 BCSC 702 at para. 39.

Decision

[17] SLEG first filed on January 26, 2022, a date preceding Langara's payment in. Its January notice of application expressly sought costs in the cause. Concerns were raised as whether the January application was premature. The application was not pursued, and after Langara made its payment, SLEG filed an amended application dated March 28, 2022. The March application expressly sought costs in any event of the cause.

[18] On April 28, 2022, SLEG filed a further version of its amended notice of application, deleting the strikethroughs and amendment underlining shown on the March application. The April application also again sought "costs to the Defendant in the cause". SLEG's counsel says the changed wording in the costs order under the April application was due to an error made in his office.

[19] No order has been entered. The fact that the issued Decision was silent as to costs does not prevent me from entertaining argument on the point. Further, I am

satisfied that SLEG intended to seek costs in any event under the April application and the order sought was inadvertently misstated.

[20] The onus is on SLEG, the party contending that the default position under the *Rules* should not apply, to persuade me to depart from the usual order.

[21] I am not convinced that costs are routinely awarded on an in any event basis on garnishment applications. The assessment of costs is fact-dependent and case-specific, in garnishment as elsewhere.

[22] As observed by Perell J. in *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v. SNC Group Inc*., 2013 ONSC 7122, the purposes of modern costs rules are multifold:

> [19] Modern costs rules are designed to advance five purposes in the administration of justice: (1) to indemnity successful litigants for the costs of litigation, although not necessarily completely; (2) to facilitate access to justice, including access for impecunious litigants; (3) to discourage frivolous claims and defences; (4) to discourage and sanction inappropriate behaviour by litigants in their conduct of the proceedings; and (5) to encourage settlements.
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> [Citations omitted.]

[23] The manner and degree of the relationship between the application and the trial itself may – or may not – be relevant when considering these purposes. Even where the relationship is relevant, the manner of that relevance will vary. For example, in *Lutoborska,* the court observed that the application to disqualify counsel was not "connected to the substance of the cause itself" (at para. 26), whereas in *Hub City Supplies*, the court's comment that the application issues would not arise at trial was an observation on the fact that the application had provided a final resolution for certain issues that would otherwise have had to be addressed at trial (at para. 16).

[24] Here, the subject of the application was not entirely unrelated to the trial matters. As noted by Regus, the issue was whether the 1044 Payment could properly be held as security for payment in the event it succeeded at trial. Taking

the *Hub City* and *Lutoborska* facts as anchoring a spectrum, SLEG's application involved, at best, moderately discrete issues.

[25] Other considerations here include the fact that Regus' conduct was not the direct cause of the application. Regus obtained the Order properly and served it on Langara. Langara made two payments into court. The application was a dispute as to whether the 1044 Payment was properly paid in under the Order.

[26] While Regus raised arguments in response to the SLEG application that did not persuade the court, I note that SLEG also advanced unsuccessful arguments. In any event, while Regus did not succeed, its submissions were neither frivolous nor inappropriate.

[27] The attachability of the 1044 Payment was, by nature, an all or nothing issue and the 1044 Payment was over $740,000. The application took two days plus an hour to hear, but the nature of the application did not require onerous preparation, and the time and resources invested were not disproportionate to the amount at stake.

[28] I am not persuaded that there is reason to departing from the usual order here. SLEG will have its costs on the application as costs in the cause. Regus will have its costs in the cause regarding SLEG's application for costs.

"Tucker J."